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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1361 120

MANUEL CARLOS,

Petitioner,

vs.

THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

GEORGE PALMER GARRETT,
Counsel for Petitioner.

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vs.

THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

To the Honorable Justices of the Supreme Court of the United States:

Manuel Carlos, Petitioner, respectfully petitions the Court for a writ of certiorari to review a final judgment of the Supreme Court of Florida, in a certain cause therein lately pending between Manuel Carlos, Appellant, and the State of Florida, Appellee. Circuit Court judgment of conviction of a felony against petitioner was affirmed by the Supreme Court of Florida on the 13th day of March, A. D. 1945, and said affirmation was rendered final by a subsequent order entered on the 20th day of April, A. D. 1945, denying said Appellant's petition for rehearing.

And in support of said petition, petitioner respectfully shows:

A

On February 4th A. D. 1944, the petitioner was tried in the Circuit Court for Seminole County, Florida, on an information against him by the State's Attorney for the Ninth Judicial Circuit, charging that on December 30th A. D. 1942 in Seminole County, Florida, the petitioner "did then and there unlawfully buy and receive two cases of cigarettes, to-wit: one case of Camel Cigarettes and one case of Lucky Strike Cigarettes, a more particular description of said property being to your Informant unknown, of the property of the St. Johns River Line Company, a corporation, which property had been theretofore embezzled, he, the said Manuel Carlos, at the time of so buying and receiving the said property, then and there well knowing that the same had theretofore been embezzled" (R. 3). In and by said trial the said Manuel Carlos, defendant therein, was deprived of his liberty without "due process of law," in this that, over his objection (R. 34 & 44 & 51), the trial judge allowed the State to introduce improper evidence, improperly procured by an unlawful search of the defendant's business premises pursuant to a search warrant issued on an illegal affidavit, contrary to the provisions of Section 22 (the search and seizure clause) of the Declaration of Rights of the Florida Constitution, and contrary to the "due process" clause of the 14th Amendment to the Constitution of the United States.

At the time of the introduction in the Circuit Court of Seminole County by the State of evidence of the search of defendant's business premises pursuant to the search warrant, counsel for Manuel Carlos objected to the same because such warrant was not in evidence (R. 34). Thereupon, the State offered in evidence the search warrant and the affidavit pursuant to which said search warrant was issued. Thereupon, the defendant objected to the introduction of

said affidavit and search warrant on the ground that same was not in conformity with the law relative to the issuance of warrants authorizing the search of the premises of a person. The objection was overruled (R. 34). Thereupon, the affidavit and search warrant were filed in evidence, and, thereupon, the trial court allowed the State to introduce evidence of the finding and seizure of five cartons of cigarettes pursuant to said search. After the illegal evidence was introduced, counsel for defendant moved to strike the affidavit and search warrant and all of the testimony that had been allowed thereunder on the ground that the affidavit was illegal because based on hearsay and the source of information was not disclosed. The motion was denied (R. 51). On this evidence and other evidence, petitioner was convicted and sentenced to serve two years in the State Penitentiary. From this conviction, petitioner appealed to the Supreme Court of Florida. There the conviction was affirmed, four Justices to three. The majority of the Court rendered no opinion other than "Affirmed" (R. 74). The three dissenting Justices held the conviction illegal because the evidence did not show the defendant guilty of the crime charged (R. 74-83). The assignment of error based on the admission of the illegal evidence secured by the illegal search warrant was pretermitted by the three Justices on the ground that the other bases for reversal was sufficient (R. 80).

The aforesaid errors with reference to use of the illegal affidavit and search warrant and the evidence secured under same, were duly reserved in the 4th, 5th and 8th grounds of the petitioner's motion for new trial (R. 73). They were made the basis for grounds Nos. 3, 11, 12 and 14 of the petitioner's grounds of appeal (R. 15-17). They were also made the basis for Question Involved No. 3 on the petitioner's appeal. They were also made the specific basis of the appellant's petition for rehearing of the decision of

the Supreme Court of Florida affirming the conviction of the appellant (R. 83).

In said petition for rehearing the point as to the illegal evidence under the search warrant is definitely allocated to the "due process" clause of the 14th Amendment to the Constitution of the United States in the following language: "Petitioner prays a rehearing because the decision overlooks and fails to consider that the defendant's fundamental procedural rights guaranteed under the due process clause of the 14th Amendment to the Constitution of the United States were violated by the admission, over objection, of improper and prejudicial evidence procured by improper and illegal search and seizure of the defendant's premises" (R. 84).

This petition for rehearing was denied, four to three, by the seven Justices of the Supreme Court (R. 87).

Thus, the record shows that petitioner affirmatively raised the Federal constitutional question the decision of which was here sought to be raised namely the want of due process in the use by the State of constitutionally illegal evidence.

Moreover, the adjudication of the said constitutional question was necessarily involved in the disposition of the case by the State Court, because, since the error in admitting the constitutionally illegal evidence was insisted upon on the main appeal, the Supreme Court of Florida when it affirmed the petitioner's conviction, necessarily ruled that the said constitutionally illegal evidence was admissable, the constitutional mandates of the Florida and United States Constitutions forbidding the use of the same notwithstanding.

B

The statutory basis for this application is Section 237 (b) of the Judicial Code, as amended (Section 344, Title 28,

U. S. C. A.), allowing certiorari where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution.

C

The question presented is whether in the circumstances disclosed by the record, the defendant was deprived of the right, privilege or immunity specially set up or claimed by the defendant under the "due process" clause of the 14th Amendment to the Constitution of the United States by conviction based in part upon illegal evidence secured pursuant to a search made illegally.

D

This case falls within the category of such cases as *Chambers* v. *Florida*, 309 U. S. 227, 84 L. Ed. 716, and *Hysler* v. *Florida*, 315 U. S. 411, 86 L. Ed. 932, which hold that fundamental procedural rights under the "due process" clause are denied when the conviction of the defendant is based upon illegal evidence. In our case it cannot be said that the defendant would have been convicted had not the illegal evidence been used by the State. The evidence is illegal under Section 22 (the search and seizure clause) of the Declaration of Rights of the Constitution of the State of Florida and under the statutes of Florida covering the issuance of search warrants, FS 933.04, 933.06 and 933.07, and, under the Florida cases determining the meaning and effect of said Section 22. *It is especially noteworthy that three Justices out of the seven Justices of the Supreme Court of Florida, in passing upon the constitutional point definitely raised in the petitioner's petition for rehearing in the Supreme Court of Florida, voted for a rehearing.*

Prayer for Writ

WHEREFORE, petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the Supreme Court of Florida, sitting at Tallahassee, Florida, commanding that Court to certify and send to this Court, upon a day to be designated, a full and complete transcript of the record and all proceedings in the case entitled *Manuel Carlos, Appellant,* v. *The State of Florida, Appellee,* therein lately pending, to the end that this cause be reviewed and determined by this Court and that the judgment of the Supreme Court of Florida may be reversed, and that the petitioner may be granted such other and further relief as may seem proper.

GEORGE PALMER GARRETT,
419 Exchange Building,
Orlando, Florida;
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1361

MANUEL CARLOS,

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THE STATE OF FLORIDA

PETITIONER'S BRIEF IN SUPPORT OF HIS PETITION FOR WRIT OF CERTIORARI

I

The Opinion of the Court Below

The opinion of the Supreme Court of Florida was rendered on the 13th of March, A. D. 1945, and reported as Manuel Carlos vs. State of Florida, — Fla. —, 21 Southern Reporter, 2nd Series, 537, Advance Sheet No. 6. The opinion was Per Curiam (R. 74), accompanied by a nine page dissenting opinion by Mr. Justice Brown (R. 74), in which Mr. Justice Terrell and Mr. Justice Buford concur (R. 83).

II

Ground on Which the Jurisdiction of the Supreme Court of the United States Is Invoked

In the cases from Florida, *Chambers* v. *Florida*, 309 U. S. 227, 84 L. Ed. 716 and *Hysler* v. *Florida*, 315 U. S. 411, 86 L. Ed. 932, and in other similar cases from other States, such as *White* v. *Texas*, 310 U. S. 530, 84 L. Ed. 1342, *Walker* v. *Johnston*, 312 U. S. 275, 85 L. Ed. 830, *Betz* v. *Brady*, 316 U. S. 455, 86 L. Ed. 1595, *Lisenba* v. *California*, 314 U. S. 219, 86 L. Ed. 166, the Supreme Court of the United States, has held that, in a criminal trial, there is the denial of "due process" under the "due process" clause of the 14th Amendment to the Constitution of the United States if there is a failure to observe that fundamental fairness essential to the fair concept of justice, and that such procedure by the prosecuting authority as the use as evidence of extorted confessions or depriving a defendant of the aid of counsel constitutes such a denial of "due process", as guaranteed under the said 14th Amendment as to entitle the defendant to a new trial.

In this present case, the petitioner grounds his petition upon the fact that, contrary to the provisions of Section 22 of the Declaration of Rights of the Constitution of the State of Florida, an illegal search was made of his business premises and illegal evidence procured by the said illegal search was, over his objection (R. 34, 44 & 51), introduced at the trial of the cause and operated unfairly to bring about the conviction of the petitioner. The Florida cases (*Gildrie* v. *State*, 94 Fla. 134, 113 So. 204, *State* v. *Quigg*, 154 Fla. 348 at 354) hold that such evidence is inadmissible where obtained in violation of and contrary to the provisions of Sections 12 and 22 of the Declaration of Rights of the Constitution of Florida. Petitioner therefore charges that he was

thereby denied "due process of law," because he was convicted in part upon evidence which the Florida courts hold to be constitutionally inadmissible and hence, was convicted without due process of law as such due process is construed by the Florida courts.

III

Statement of the Case

On February 12, 1943, the State Attorney of the 9th Judicial Circuit of the State of Florida filed an information in the Circuit Court of Seminole County, charging that Manuel Carlos, on December 30, 1942, "did unlawfully buy and receive two cases of cigarettes, to-wit, one case of Camel Cigarettes and one case of Lucky Strike Cigarettes, a more particular description of said property being to your Informant unknown, of the property, goods and chattels of the St. Johns River Line Company, a corporation, which property had theretofore been embezzled, he, the said Manuel Carlos, at the time of so receiving the said property, then and there well knowing that the same had theretofore been embezzled". Manuel Carlos pleaded "not guilty". Upon his first trial, in August, A. D. 1943, the jury could not agree and a mistrial was declared. He was again tried in February, 1944, and a verdict of guilty was rendered (R. 5). He moved for a new trial (R. 72), which motion was denied and a judgment and sentence of two years was imposed by the Court. (R. 5 & 6). From this judgment and sentence, Manuel Carlos took an appeal to the Supreme Court of Florida (R. 61), where, on March 13th, A. D. 1945, his judgment of conviction was affirmed, four Justices to three, by a per curiam opinion reading merely read "Affirmed" (R. 74). The nine page dissenting opinion of Mr. Justice Brown (R. 74) joined by two other of the seven justices of the Supreme Court of Florida

(R. 83) set forth in detail the errors that were committed in the trial, including the one here complained of (R. 80). The defendant filed a petition for rehearing (R. 83), specifically setting up therein that "the defendant's fundamental rights guaranteed under the due process clause of the 14th Amendment to the Constitution of the United States were violated by the admission over objection of improper and prejudicial evidence procured by improper and illegal search and seizure of the defendant's premises" (R. 84). On April 20th, A. D. 1945, this petition for rehearing was denied, four justices to three (R. 87).

The evidence at the trial disclosed as follows: At the time of his arrest and for six years prior thereto, Manuel Carlos operated a place of business known as Manuel's Tavern, about six miles south from Sanford, Florida, on the road from Sanford, Florida, to Orlando, Florida, where he operated a restaurant and sold meats, gasoline, wine, tobacco and cigarettes (R. 58). He usually kept on hand between sixteen and eighteen different kinds of cigarettes and from 60 to 75 cartons of cigarettes of various popular brands, including Camels and Lucky Strikes (R. 59 & 75). The State contended that on the evening of December 30, 1942, one Felix Webb, a driver for the St. Johns River Line Co., drove up to said tavern in a semi-trailer of that company and sold to the defendant two cases of cigarettes at $10.00 per case, which he had no authority to do. Upon making the sale, he opened the door of the trailer and crawled in and took out these two cases of cigarettes and threw them over the fence of defendant's tavern and later drove on into Orlando and delivered the trailer to the company. Some time later, Webb was jailed on a charge of stealing the cigarettes and signed a confession stating that he had disposed of the cigarettes to Manuel Carlos (R. 75 & 76).

Thereupon, the manager of the St. Johns River Line Co. made an affidavit as a basis for a search warrant to be issued

to search the defendant's premises for the two cases of cigarettes. In this affidavit, he stated that when the Company's load of freight reached the Orlando office of his company, there was missing one case of Camel Cigarettes on which case was marked "T. J. Hobbs, Orlando, Florida", and one case of Lucky Strike Cigarettes, on which was marked the numeral "2", said mark being made with white chalk (R. 7 & 76). In his affidavit he further stated that he had learned that the said two cases of cigarettes were sold by the truck driver to one Manuel Carlos, who operates a place of business known and designated as "Five-Points", about 7 miles south of Sanford and that he has reason to believe that said cigarettes or some part of them is now located in or on the premises now occupied by the said Manuel Carlos, and that the said Manuel Carlos at the time he bought the said cigarettes for $10.00 a case well knew that the same was stolen property (R. 8). Although required by statute to do so, affiant did not disclose the source of his said information, or set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist (R. 7 & 8). FS 933.04, 933.05 and 933.06 and Section 22 of the Declaration of Rights of the Constitution of Florida.

On the basis of this affidavit, the County Judge issued a search warrant (R. 9), and the premises at Manuel's Tavern were searched. The Sheriff's return, on the search warrant, showed that the only property taken by him under said warrant were "Five cartons Camel cigarettes (1000 cigarettes)" (R. 10). The deputy sheriff making the search testified he did not find either of the two cases of cigarettes described in the search warrant but that there were plenty of cartons of Lucky Strikes, and Camels, and other popular brands of cigarettes on display and stored in different parts of the place and that the five cartons of Camels which the searchers took away were found in an out of the way

place in the kitchen and that the searchers took them away as being probably a part of the contents of the case of Camels alleged to have been sold by Webb to Manuel Carlos (R. 36-38 & 77).

The record shows that, at the trial, counsel for defendant objected to the introduction of the affidavit and search warrant on the ground that the affidavit did not conform to the law in that it failed to set out sufficient facts for the issuance of the warrant and specifically stated that the information given to the affiant was information based on hearsay—a statement made by another to him, and on the ground that the attached inventory as made by the sheriff failed to disclose the securing of the cigarettes described in the affidavit and warrant, as provided by FS 933.04, 933.06, 933.07 and 933.11 (R. 34). This objection was overruled (R. 34). Later, counsel for defendant twice moved to strike all the evidence of the illegal search (R. 44 & 51). These motions were denied (R. 44 & 51).

As Mr. Justice Brown says, in his dissenting opinion: The two cases of cigarettes described in the search warrant were admittedly not found in the defendant's place of business, and: "*There was no evidence whatever to show that the five cartons of Camel cigarettes were a part of either of the two cases of cigarettes described in the search warrant*" (R. 80). Further, in said dissenting opinion, Mr. Justice Brown says: "In view of the language of the affidavit and search warrant, it is quite possible that the defendant's further motion to strike all of the rather extensive testimony as to what transpired in making the search in the defendant's tavern should have been granted, but the question is not free from difficulty and we do not deem it necessary to rule upon it, as we think this case can be disposed of on another ground" (R. 80).

IV

Specification of Error Assigned

The Supreme Court of Florida erred in sustaining the rulings of the Circuit Court denying to the defendant his rights, privileges and immunities under the "due process" clause of the 14th Amendment to the Constitution of the United States in reference to the illegal evidence given as to the illegal search and seizure, and this error resulted in bringing about the conviction of Manuel Carlos without "due process of law".

V

Argument

It is our contention that it was a denial of the "due process" clause as guaranteed in the 14th Amendment to the Constitution of the United States for the trial court to allow the illegal affidavit and the search warrant to be introduced in evidence over the objection of the defendant, and also to allow in evidence testimony of the searching parties that they found, as the result of the illegal search, "Five cartons Camel cigarettes (1000 cigarettes)" (R. 10, 35-42, 43, 44, 50 & 51). It was likewise fundamental error for the Supreme Court of the State of Florida to affirm the ruling of the trial court in this regard (R. 74), particularly after its attention was specifically called to the defendant's said deprivation of his constitutional rights under the "due process" clause of the 14th Amendment to the Constitution of the United States (R. 84 & 87).

An examination of the dissenting opinion of Mr. Justice Brown (R. 74), and an examination of the record, will disclose that during and throughout the trial and during and throughout his appeal, the defendant reserved the error to the rulings of the trial Court involving this constitutional

question. This error was reserved (R. 34, 44, 51) by objecting to the introduction of the evidence (R. 34) and later (R. 44 & 51) twice moving to exclude it, and by making the error the basis of grounds of the motion for new trial (R. 72), grounds of appeal (R. 15), presenting same as a question involved in his brief in the Supreme Court and filing a petition for rehearing specifically referring to the "due process" clause of the Federal Constitution (R. 83 & 84).

The Supreme Court of Florida in affirming the conviction of the defendant necessarily passed upon and rejected the petitioner's claim of constitutional right, privilege and immunity here claimed.

Water Power Co. v. *Street Railway Co.*, 172 U. S. 475, 488;

Spies v. *Illinois*, 123 U. S. 131 and 181.

If, as was held in the case of *Chambers* v. *Florida*, 309 U. S. 227, 84 L. Ed. 716, the "due process" clause of the 14th Amendment was intended to guarantee procedural standards adequate and appropriate and then and thereafter to protect at all times persons charged with or suspected of crime by persons holding positions of power and authority, then the use, by the State of Florida, in the trial of Manuel Carlos, of the aforesaid constitutionally illegal evidence, illegally obtained, was a denial of this guarantee.

If, as stated in the case of *Lisbena* v. *California*, 314 U. S. 219, 86 L. Ed. 166, as applied to criminal trials, denial of "due process" is the failure to observe that fundamental fairness essential to the fair concept of justice, then again, the use by the State of the aforesaid constitutionally illegal evidence illegally obtained was contrary to the fundamental precepts of fairness as embodied in Section 22 of the Declaration of Rights of the Constitution of the State of Florida.

The fact that the Supreme Court of Florida has determined that the use of the said illegal evidence was not a violation of the "due process" clause of the 14th Amendment, does not answer the question whether "due process" was in fact lacking.

Lisbena v. *California, supra.*

The Supreme Court of the United States says that, where the State, through its responsible officers, knowingly uses illegal evidence, one thus convicted may claim protection of the "due process" clause.

Hysler v. *Florida,* 315 U. S. 411, 86 L. Ed. 932.

The affidavit for search warrant was based on alleged information and alleged reason to believe, without a statement of the source of the information, and described the two cases of cigarettes to be searched for as "one case of Camel Cigarettes on which case was marked 'T. J. Hobbs, Orlando, Florida', and one case of Lucky Strike Cigarettes on which was marked the numeral '2' ". This was an affidavit insufficient under the Florida Constitution, statutes and cases to justify the issuance thereon of a search warrant. Nevertheless, a search warrant was issued and a search was made. At the trial, the searching officer testified, over the objection of the defendant, that the searching party found five cartons of Camel cigarettes which were in no way marked, further testified that the searching party did not find either of the two cases of cigarettes described in the search warrant (R. 39 & 40). Since the evidence was that Manuel Carlos was operating a place known as Manuel's Tavern, where cigarettes were one of the commodities ordinarily sold and that he had on display and for sale many brands of popular cigarettes, including many cartons of Lucky Strike cigarettes and Camel cigarettes, the five unmarked cartons of Camels found in no sufficient

way corresponded to the cases of cigarettes described in the affidavit for search warrant. The illegal affidavit and search warrant and the evidence as to the search and the finding of the five unmarked cartons of cigarettes were invasions of petitioner's constitutional rights to be convicted by due process and a denial of due process in his conviction. The affidavit for the search warrant was admittedly based upon hearsay knowledge, the source of which is not disclosed. The affidavit merely states that the deponent "has learned" and "has reason to believe" certain facts. Moreover, the affidavit refers to the property as *stolen* property and not as embezzled property. The affidavit does not, as required by FS 933.06, set forth the facts tending to establish the grounds of the application or probable cause for believing them to exist. It does not set forth any facts tending to establish any knowledge on the part of Manuel Carlos that the cigarettes were embezzled or that there was probable cause for the affiant to believe that such knowledge existed. Nor does the affidavit disclose the premises desired to be searched. It merely states that Manuel Carlos operates a place of business known and designated as "Five Points" etc., but does not state that it is desired to search said premises. Moreover, the affidavit does not link the ownership of the place with the property to be searched for. Yet, supported by the State's authority and offered pursuant to the affidavit and search warrant, the evidence of the search carried an official character which tended to produce, and did produce, the conviction of the defendant.

In the case of

Jackson v. *State* (1924), 87 Fla. 262, 99 So. 548,

it was held that the Constitutional requirement that the "thing to be seized" be "properly described", contemplates some word or words of description to link the owner-

ship of the place with property to be searched for. No such sufficient description and linking appears in the affidavit for search warrant used in our case.

A very recent Florida case,

State ex rel. Wilson v. *Quigg, Chief of Police* (1944), 154 Fla. 348, 17 So. (2nd) 697,

Opinion by Brown, Justice, states that statutes authorizing searches and seizures must be strictly construed, and that affidavits made, and search warrants issued thereunder must strictly conform to the constitutional and statutory provisions. In support of this statement, the said case cites:

Hart v. *State*, 89 Fla. 202, 103 So. 633;
Gildrie v. *State*, 94 Fla. 134, 113 So. 704.

The following Florida cases hold that the person making the affidavit must set forth the facts upon which his belief is based so that the affiant may be held responsible for the falsity thereof:

Cooper v. *State*, 106 Fla. 261, 262, 143 So. 217;
106 Fla. 261, 262, 263, 143 So. 219 (five cases);
106 Fla. 261, 262, 143 So. 220 (three cases);
112 Fla. 442, 150 So. 604.

The strictness with which the Supreme Court deals with such matters is shown in the case of:

Gildrie v. *State*, 94 Fla. 134, 113 So. 704.

where it is stated that the rule is that such searches are usually made without the consent of the occupant of a domicile, and, the investigation being a proceeding *in invitum*, the statute authorizing it is to be strictly construed, and no presumptions of regularity are to be invoked in aid of the process under which the officer obeying its command undertakes to justify.

Moreover, the *Gildrie* case holds that the protection of Sections 12 and 22 of the Declaration of Rights, Constitution of Florida, extends to all equally—to those justly accused as well as to the innocent. Quoting from the case of *Agnello* v. *U. S.*, 209 U. S. 20, 70 L. Ed. 145, the opinion in the *Gildrie* case says further: The search of a private dwelling is, in itself, unreasonable and abhorrent in our laws. The *Gildrie* case holds that evidence obtained by the unlawful search of a dwelling house is not admissible to prove the occupant guilty of a criminal offense when such evidence is obtained in violation of and contrary to the provisions of said Sections 12 and 22, and, on timely objection being made, such so-called evidence should be excluded.

The illegal affidavit for search warrant used in our case does not conform with the requirements of the decisions of the Supreme Court of Florida dealing with the requirements of Section 22 of the Declaration of Rights of the Constitution of Florida. According to those prior decisions the evidence used by the State to secure a conviction was constitutionally illegal. The use of such an illegal affidavit made the search illegal, and the use of the evidence secured by this illegal search deprived Manuel Carlos of his fundamental right to "due process".

It is true that the clause in the Fourth Amendment to the United States Constitution forbidding the issuance of search warrants except in compliance with required conditions only relates to the Federal government and has no application to State process.

The Volant, 59 U. S. 71.

However, it is also true that the unlawful seizure and use of a man's private property is equivalent to compelling him to be a witness against himself and is, therefore, by

the Fifth Amendment to the United States Constitution forbidden in a Federal criminal prosecution against him.

Boyd v. *U. S.*, 116 U. S. 616.

And it is also true that, in the Federal courts evidence obtained from defendant by an unlawful search is inadmissible against him in a Federal criminal prosecution.

Snyder v. *U. S.*, 285 Federal 1.

By analogy the use of such evidence in a criminal prosecution against a defendant in a *state* court, where, as in Florida, the State Constitution forbids unlawful searches and seizures (Section 22 Declaration of Rights, Florida Constitution) is illegal and amounts to compelling him to be a witness against himself, which is forbidden, in Florida, by Section 12 of the said Declaration of Rights. Moreover, the Supreme Court of Florida has held that evidence obtained by unlawful search is inadmissible.

Kendall v. *State*, 117 Fla. 271, 157 So. 569;
Gildrie case, *supra;*
State v. *Quigg, supra.*

The *Gildrie* case, *supra*, cites at length from the case of *Agnello* v. *U. S.*, 209 U. S. 20, 70 L. Ed. 145 and adopts as State doctrine the Federal doctrine therein announced. Under the doctrine of the *Agnello* case, *supra*, the evidence here used and admitted was fundamentally inadmissible.

In this present case, the Supreme Court of Florida has sanctioned the use of evidence illegally obtained by the State, and, in doing so, has compelled the defendant against his will to be a witness against himself. Where, to support a criminal conviction, a State must depend upon evidence obtained in violation of a State Constitutional provision and used in violation of another State Constitutional provision and, contrary to the prior decisions of the Su-

preme Court of that State, it violates the "due process" clause of the Federal Constitution, by denying him a fundamental procedural right.

Chambers v. *Florida*, 309 U. S. 227, 84 L. Ed. 716;
Hysler v. *Florida*, 315 U. S. 411, 86 L. Ed. 932.

Conclusion

For the reasons aforesaid, the Supreme Court of Florida has, by approving the various rulings of the trial court, which admitted constitutionally illegal evidence, deprived Manuel Carlos of his rights, privileges and immunities under the "due process" clause of the 14th Amendment to the Constitution of the United States, because it has affirmed a conviction based in part upon such constitutionally illegal evidence. Therefore, the judgment of the Supreme Court affirming the conviction of Manuel Carlos should be set aside and the petitioner granted a new trial in which his guilt or innocence can be tested without the use of such constitutionally illegal evidence.

Respectfully submitted,

George Palmer Garrett,
Orlando, Florida,
Counsel for Petitioner.

APPENDIX "A"

Constitutional Provisions and Sections of Statutes Involved:

Section 12 of the Declaration of Rights of the Florida Constitution of A. D. 1885.

Section 12. No person shall be subject to be twice put in jeopardy for the same offense, or compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law * * *

Section 22 of the Declaration of Rights of the Florida Constitution of A. D. 1885.

Section 22. "The right of persons to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated, and no warrants issued, but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched and the person or persons, and thing or things to be seized".

Sections of Statutes Involved.

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized (FS 933.04).

"The judge or magistrate must, before issuing the warrant have the application of some person for said warrant, duly sworn to and subscribed, and may receive further testimony from witnesses or supporting affidavits, or depositions in writing, to support the application. The affidavit and further proof, if same be had or required, must set forth the facts tending to establish the ground of the application or probable cause for believing that they exist" (FS 933.06).

"The judge or magistrate, upon examination of the application and proofs submitted, if satisfied that probable cause exists for the issuing of the search warrant, shall thereupon issue a search warrant signed by him with his

name of office, to any sheriff and his deputies or any constable, police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the same before the magistrate or some other court having jurisdiction of the offense" (FS 933.07).

The Florida Criminal Procedure Act promulgates official forms for use in criminal cases, among which is an official form for a search warrant, which reads as follows:

"10. Affidavit for search warrant:

STATE OF FLORIDA,
——— County,
——— District.

Before the subscriber, a justice of the peace in and for said county, personally came A. B., who being duly sworn, says that on the —— day of —— A. D. — the following goods (here describe the goods particularly), were feloniously stolen, taken and carried away out of the house of the said A. B., in the county aforesaid, and that the said A. B. has probable cause to believe, and does believe, that the said goods, or part thereof, are concealed in the dwelling house of C. D., in said county and district.

Sworn to and subscribed before me this — day of —— A. D. 19—.

——————— (Seal)
Justice of the Peace.

(Sub. Sec. 10 of Sec. 279, of Florida Criminal Procedure Act, Annotated, by Adkins.)